

INTERIM INSTRUCTION NOTICE #08-001

December 18, 2008

SUBJECT: Unauthorized Access, Use, or Disclosure of Confidential Medical Information

DISTRIBUTION: All Department of Behavioral Health
Staff and Contract Agencies

Effective Date January 1, 2009

Overview The Confidentiality of Medical Information Act (CMIA) has expanded the amplification of its intent by the passage of Assembly Bill 211 (AB 211) and Senate Bill 541 (SB 541). The intent of the aforementioned bills is to protect against the unauthorized or unlawful access, use, or disclosure of confidential medical information by the implementation of administrative, physical, and technical safeguards. Additionally, the bills have created comprehensive violations and a graduated penalty system in the event of any violation.

Change in Procedure It is the responsibility of each employee, regardless of job title and responsibilities, to report any unlawful or unauthorized access, use, or disclosure of confidential medical information. Be advised that no adverse action will be taken against any person who reports a suspected or actual violation in accordance with the legislation so long as the report is made in good faith. All reports are to be made to Department of Behavioral Health (DBH), Office of Compliance as soon as practically possible after the violation occurs, but no later than 24 hours.

DBH is required to report any violations of this legislation, after substantiation, to the California Department of Public Health (CDPH) within five (5) days of substantiation. If DBH fails to report any violation, the department will be assessed a penalty of \$100 per day for each day that the unlawful or unauthorized access, use, or disclosure is not reported not to exceed a total of \$250,000. Once reported to CDPH, they will refer violations to California Office of Health Information Integrity (CalOHII) and an investigation will be conducted. At the conclusion of the investigation, CalOHII will assess a penalty in accordance with the nature, severity, and prior violations that have been reported. CalOHII has full discretion to consider all factors when determining the amount of an administrative penalty. In some cases, CalOHII may determine that another state agency is more suitable to conduct the investigation in which they will refer the violation to that agency for investigation. Examples of other state agencies include the Attorney General's Office or the County District Attorney's Office.

To ensure compliance with AB 211 and SB 541, DBH requires that all employees adhere to current written policies that address the safeguards and

disclosure of confidential medical information. While DBH is in the process of implementing a policy to address the safeguards, violations, and penalties of this legislation, it is imperative that employees of the department be apprised of and adhere to the amplifications of these regulations. While Health Insurance Portability and Accountability Act (HIPAA) safeguard requirements for covered entities is not all inclusive of this regulation, it will serve as an interim general guideline for the safeguard requirements that will be adopted by this legislation.

Questions Questions regarding this Interim Instruction Notice can be directed to the Office of Compliance at (909) 382-3137, (800) 398-9736 or Compliance_Questions@dbh.sbcounty.gov

References County of San Bernardino Policy, 16-02
The Confidentiality of Medical Information Act (Part 2.6 commencing with Section 56 of Division 1 of the Civil Code)
California Health and Safety Code, §130200-130205
California Health and Safety Code, §1280.1-1280.15
California Civil Code 56.36